

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

STEPHEN A. KELLOGG,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
JUSTICE, *et al.*,

Defendants.

Case No. C05-5378FDB

REPORT AND  
RECOMMENDATION

Noted for October 21, 2005

This matter is before the court on plaintiff's failure to respond to the court's previous order. For the reasons set forth below, I recommend that this complaint be dismissed as frivolous pursuant to 28 U.S.C. § 1915.

DISCUSSION

In order to state a claim under 42 U.S.C. § 1983, a complaint must allege that (1) the conduct complained of was committed by a person acting under color of state law and that (2) the conduct deprived a person of a right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present. Haygood v. Younger, 769 F.2d 1350, 1354 (9th Cir. 1985), cert. denied, 478 U.S. 1020 (1986).

Plaintiff must allege facts showing how individually named defendants caused or personally participated in causing the harm alleged in the complaint. Arnold v. IBM, 637 F.2d 1350, 1355 (9th Cir.

1 1981). A § 1983 suit cannot be based on vicarious liability alone, but must allege the defendants' own  
2 conduct violated the plaintiff's civil rights. City of Canton v. Harris, 489 U.S. 378, 385-90 (1989). A  
3 supervisor may be held liable only "if there exists either, (1) his or her personal involvement in the  
4 constitutional deprivation, or (2) a sufficient causal connection between a supervisor's wrongful conduct  
5 and the constitutional violation." Redman v. County of San Diego, 942 F.2d 1435, 1446 (9th cir. 1991),  
6 *cert. denied* 502 U.S. 1074 (1992).

7 Frivolous *in forma pauperis* complaints may be dismissed before service of process under 28  
8 U.S.C. § 1915. Neitzke v. Williams, 490 U.S. 319, 324 (1989). A complaint is frivolous if "it lacks an  
9 arguable basis in law or in fact." *Id.* at 325. Leave to amend is not necessary where it is clear that the  
10 deficiencies in the complaint cannot be cured by amendment. Franklin v. Murphy, 745 F.2d 1221, 1228  
11 n.9 (9th Cir. 1984). Plaintiff's complaint should be dismissed as frivolous.

12 Here, on June 2, 2005, the Court Clerk received plaintiff's complaint along with an application to  
13 proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. On June 24, 2005, the court granted the  
14 application and reviewed the complaint, which was found to be deficient. The court specifically explained  
15 that plaintiff failed to show how a particular individual defendant personally participated in an alleged  
16 violation. The court provided plaintiff the opportunity to cure these deficiencies and/or to amend his  
17 complaint by not later than July 29, 2005; however, to date the clerk has not received any further pleadings  
18 from the plaintiff in this matter.

### 19 CONCLUSION

20 Plaintiff's complaint contains several fatal errors, and though he was given the opportunity to cure  
21 those deficiencies by filing an amended complaint, plaintiff has failed to respond to the court's order to  
22 show cause why this matter should not be summarily dismissed. Accordingly, the undersigned  
23 recommends that the Court dismiss this complaint prior to service as frivolous pursuant to 28 U.S.C.  
24 §1915.

25 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties  
26 shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6.  
27 Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474  
28 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter

1 for consideration on **October 21, 2005**, as noted in the caption.

2 DATED this 29th day of September, 2005.

3  
4 /s/ J. Kelley Arnold  
J. Kelley Arnold  
United States Magistrate Judge  
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